IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 484 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMINIBEN THAKORBHAI GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 484 of 2001

MR HM PARIKH for Petitioner No. 1

MR HU RAVANI for Respondent No. 1

RULE SERVED for Respondent No. 2

MR KG SETH - Ld. APP for the State.

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/02/2002

ORAL JUDGEMENT

#. The present petitioner is the accused before the learned Judicial Magistrate First Class at Ananad in Criminal Case No.231/1999 for having committed offences

punishable under Sections 323, 504 and 506(2) of the Indian Penal Code. A complaint was filed on 21.12.1998 against them. The same was referred for investigation under Section 156(3) of the Code of Criminal Procedure, 1973. After investigation, charge-sheet has been filed and, therefore, the trial was going on against the petitioners. During the course of the pendency of the said trial, the original informant/complainant submitted an application 5.1.1999 for production of passport before the trial Court, so that the petitioner may not run away outside the territory of India. The trial Court allowed the application by order dated 3.10.2000 and directed the petitioner to submit her passport before the trial Court and on such submission, the same may be kept in safe custody with the Nazir of the Court. Feeling aggrieved by that order of the trial Court, the present Revision Application has been filed.

#. Rule was issued and Mr.H.U.Ravani, learned advocate appeared for original complainant, whereas Mr.K.G.Seth, learned APP has appeared for the State. At the final hearing of this Revision Application Mr.H.U.Ravani, L.A. for the original complainant was not present, even when the matter was taken up in the 2nd sessions at about 3:30 P.M. Therefore, I have heard the learned advocate for the petitioner as well as the learned APP for the State. During the course of hearing a consensus was arrived and by consent of this two learned advocates for the parties following order is passed :-

(i) The order of the learned Magistrate dated 3.10.2000 directing the petitioner to submit passport within 10 days and on such submissions the same may be retained in the safe custody of the Nazir which is impugned, in the Revision Application is ordered to be set aside.
(ii) The learned advocate for the petitioner has assured that the petitioner being accused in the aforesaid Criminal Case, will not seek any adjournment on the ground that the petitioner is not present in the Court.
(iii) Learned advocate for the petitioner also agrees and assures that in case the petitioner is unable to attend the Court, they will apply for permission to appear through advocate.
(iv) He further assures that no dispute about the identity of the accused shall be raised by the petitioner, if they remain absent and apply for permission to remain absent.
(v) He also assures that the trial may proceed ahead according to law and if the petitioner is not present,

the trial may proceed in absence of the petitioner and the petitioner, at appropriate time, may be permitted by the Court concerned to remain present through their advocate.

#. On the aforesaid conditions, the present Revision Application is ordered to be disposed of. The above assurance will naturally help in expeditious disposal of the case of the original complainant. It is further made clear that in case the petitioner do not remain present and do not seek permission to remain absent and/or do not seek permission to remain present through advocate and on account of the said action on the part of the petitioner if the trial is held up or delayed or at any material occasion, if it is found that the personal attendance of the petitioner is absolutely necessary and if the Court so directs and yet the petitioner do not obey the orders of the Court, it would be open to the original complainant to make an application for cancellation of bail order and if such prayer is made, the trial Court shall dispose of such an application according to law. Mr.K.G.Seth, learned APP also states that if such a direction is given, the case of the original complainant can proceed ahead smoothly without any interruption.

#. With these observations and with the above direction, this Revision Application stands disposed of. Rule is made absolute to the aforesaid extent.

(D. P. BUCH, J.)

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